

Monday, 1 July 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
CONFERENCE ROOM OF THE TRIBUNAL
Room 217
War Ministry Building
Tokyo, Japan.

THE UNITED STATES OF AMERICA, et al.,

- against -

ARAKI, Sadao, et al.

APPLICATION FOR APPOINTMENT OF MASTER
COMMISSIONER TO TAKE TESTIMONY

Before:

HON. SIR WILLIAM WEBB, President
of the Tribunal and Member from
the Commonwealth of Australia.

Reported by:
John J. Smith

Appearances:

For the Prosecution Section:

MR. CARLISLE W. HIGGINS, Acting Chief
Counsel, representing Mr. Joseph
B. Keenan, acting on behalf of the
United States of America

MR. JUSTICE A. J. MANSFIELD, Associate
Counsel, acting on behalf of the
Commonwealth of Australia; and

MR. EUGENE B. WILLIAMS

For the Defense Section:

LIEUTENANT ARISTEDES G. LAZARUS
MR. KANZAKI, Masayoshi,
Counsel for Accused HATA; and
MR. OWEN CUNNINGHAM

For the Office of General Secretary, IMTFE

EDWARD H. DELL, Judge,
Legal Adviser to the Secretariat;

VERN WALBRIDGE, Colonel, CAC,
General Secretary

MR. G. WALTER BOWMAN, Clerk of the Court.

For the Language Section:

ENSIGN DAVID F. HORNSTEIN, Chief

(Hearing started at 9:10 A.M.)

THE PRESIDENT: Mr. Justice Mansfield.

MR. JUSTICE MANSFIELD: We have one other matter this morning. This is an application by the prosecution for an order for the examination on commission of certain witnesses from China, and the prosecution desires to know when that is likely to come up.

THE PRESIDENT: Will we have to send someone to China?

MR. JUSTICE MANSFIELD: No, they are in Tokyo.

MR. WILLIAMS: One is a lieutenant in the Chinese Army, and he is required back in China.

Two others are on the staff of UNRA in China. Their chief work is administrative, and it is necessary that they return to China as soon as possible.

They were brought here by plane from China. They left by plane before June 3rd. We were out of contact with the plane before we knew of the adjournment from June 3 to June 13th. We got the witnesses here before it was necessary, and it may be that they will not be heard for a couple of weeks.

These three men have commitments that make it very desirable that they should be permitted to return as soon as possible.

Under the circumstances, we request that the Court appoint a master to take their testimony, so that we can get them back to their duties in China.

MR. CUNNINGHAM: No one in the Defense Section has any idea about this matter.

MR. WILLIAMS: We ask that a date be fixed as soon as possible.

THE PRESIDENT: We all went to take the evidence.

MR. CUNNINGHAM: Oh, yes. We appreciate the situation.

THE PRESIDENT: I will take it before the Members of the Tribunal.

MR. CUNNINGHAM: We have 28 counsel, and it may be a lengthy cross-examination.

THE PRESIDENT: If the evidence is taken on commission, it will be in the presence of representatives of the defense.

MR. CUNNINGHAM: I hope we will be able to spare the time for this.

MR. WILLIAMS: Mr. President, I know the defense attorneys do not want to work more than 44 hours. I know they are busy, but we were unable to find anyone in their offices all Saturday

morning. It occurred to me that, if the Court were to grant this commission, we might take the statements of these witnesses on next Friday. The Court will probably not be in session, and that will enable counsel to be present on Friday and Saturday morning.

THE PRESIDENT: I will fix nine o'clock tomorrow morning for the further hearing of this matter.

(At 9:15 A.M., hearing adjourned
until Tuesday, 2 July 1946 at 9:00 A.M.)

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Tuesday, 2 July 1946

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HEARING RESUMED - Same place (9:00 A.M.)

Appearances:

For the Prosecution Section:

MR. CARLISLE W. HIGGINS, Acting Chief
Counsel, representing Mr. Joseph
B. Keenan, acting on behalf of the
United States of America;

MR. A. S. COMYNS-CARR, Associate Counsel
acting on behalf of Great Britain and
Northern Ireland;

MR. VALENTINE C. HAMMACK;

JUDGE CHE-CHUN HSIANG

COLONEL THOMAS H. MORROW

MR. EUGENE WILLIAMS

For the Defense Section:

MR. FLOYD J. MATTICE

MR. GEORGE C. WILLIAMS

LIEUTENANT ARISTEDES G. LAZARUS

MR. OWEN CUNNINGHAM

For the Office of the General Secretary, IMTFE:

EDWARD H. DELL, Judge,
Legal Adviser to the Secretariat

MR. G. WALTER BOWMAN,
Clerk of the Court

For the Language Section:

ENSIGN DAVID F. HORNSTEIN, Chief

THE PRESIDENT: This is an application to take evidence on commission, the evidence being that of three witnesses from China, including the Vice-Minister of Defense of China and two supervisors of the United Relief Rehabilitation Association.

I think this will have to be dealt with by all the judges.

We may be able to take the evidence straight away within a day or two. I have no intention of appointing a commissioner. Seeing that we have 26 defendants and counsel, we might as well have the proceedings in the court itself, and then we will have all the judges there. There is nothing to be gained by taking the evidence on commission, but I think the situation will be met by taking the evidence within a few days, if that is suitable.

MR. COMYNS-CARR: The only objection to that is that under the order of the proceedings, it is apt to be confusing. There is no objection to the Court taking the testimony.

THE PRESIDENT: Suppose at the end of the day, or tomorrow, we will take the evidence and see the witnesses. Then these witnesses can return to China. That might be well. We can take

it in a day, or can sit on Saturday morning.

MR. COMYNS-CAR: It is entirely a matter for the trial Court.

THE PRESIDENT: Can you get through in a day?

MR. HIGGINS: I do not know. The cross-examination may be long. I doubt if we can get through in a day. It may take a day and a half.

THE PRESIDENT: We may take it Friday and Saturday.

MR. HIGGINS: I think that would be a better time.

THE PRESIDENT: We will decide Wednesday afternoon. We will suspend the regular procedure until this evidence is taken.

MR. COMYNS-CAR: If that is more convenient for the Tribunal, it is satisfactory.

THE PRESIDENT: I will adjourn this application and decide it later.

(See page 1728 of the Minutes of the Trial for ruling)

(Hearing adjourned at 9:08 A.M.)

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